

MINUTES
OCTOBER 6, 2015

BOARD OF ADJUSTMENT

LONG HILL TOWNSHIP

CALL TO ORDER AND STATEMENT OF COMPLIANCE

The Chairman, Dr. Behr, called the meeting to order at 8:00 P.M. He then read the following statement: Adequate notice of this meeting had been provided by posting a copy of the public meetings on the municipal bulletin board, by sending a copy to the Courier News and Echoes-Sentinel and by filing a copy with the Municipal Clerk on January 6, 2015.

MEETING CUT-OFF

Chairman Behr read the following statement: Announcement was made that as a matter of procedure, it was the intention of the Board of Adjustment not to continue any matter past 11:00 P.M. at any Regular or Special Meeting of the Board unless a motion was passed by the members then present to extend the meeting to a later specified cut-off time.

CELL PHONES AND PAGERS

Chairman Behr read the following statement: All in attendance were requested to turn off cell phones and pagers as they interfere with the court room taping mechanism.

PLEDGE OF ALLEGIANCE

ROLL CALL

On a call of the roll, the following were Present:

Excused:

E. Thomas Behr, Chairman
Edwin F. Gerecht, Jr., Vice-Chairman
Jerry Aroneo, Member
Michael Pesce, Member
Richard Keegan, Member
Michael O'Mullan, Member
Michael Pudlak, Member
Thomas Sims, 1st Alternate
Jeffrey Wills, 2nd Alternate

Dan Bernstein, Bd. Attorney
Thomas Lemanowicz, Bd. Engineer
Kevin O'Brien, Bd. Planner
Cyndi Kiefer, Bd. Secretary

Ms. Kiefer advised Chairman Behr that he had a quorum and could proceed.

EXECUTIVE SESSION

It was determined that there was no need to hold an executive session.

APPROVAL OF MINUTES

Mr. Pesce motioned approval of the minutes of September 15, 2015 as written. Mr. Aroneo seconded the motion. A **VOICE VOTE** was taken and the minutes were unanimously approved. Chairman Behr, Pudlak, Mr. Sims, and Mr. Wills were ineligible to vote since they were not present at that meeting.

RESOLUTION OF MEMORIALIZATION - Appointment of Cynthia Kiefer as full time Planning and Zoning Coordinator. Mr. Gerecht motioned approval of the resolution and Mr. Pesce seconded. A **VOICE VOTE** was taken and the resolution was unanimously approved. Chairman Behr, Mr. Pudlak, Mr. Sims, and Mr. Wills were ineligible to vote since they were not present at the September 15, 2015 meeting when the Board voted on the resolution to appoint Ms. Kiefer as full time Planning and Zoning Coordinator.

PUBLIC HEARING

TERENCE GOLDEN

Metzlar Place

Block 10515, Lot 8.02

(carried from September 15, 2015 with no further notice)

#15-01z

D-1 Use Var., Bulk Vars.,
Unimproved Road

PROOF OF SERVICE PROVIDED

Present:

Terence Golden, applicant

John Sullivan, attorney for the applicant

Robert Gazzale, PE, PLS, engineer for the applicant

John McDonough, LA, PP, AICP, planner for the applicant

John J. Sullivan, Jr., Esq. of the firm of **Vastola, Fackelman & Sullivan**, Middlesex, NJ stated that Terence Golden applied to the Zoning Board of Adjustment for submission waivers, a use variance pursuant to N.J.S.A. 40:55D-70d(1), bulk variances pursuant to N.J.S.A. 40:55D-70c, and a planning variance pursuant to N.J.S.A. 40:55D-36 for property which was located on Metzlar Place, Stirling, and designated as Lot 8.02, Block 10515 on the Long Hill Township Tax Map, which premises was located in the B-2 General Commercial Zone. In addition to Mr. Sullivan, the application was presented by Civil Engineer Robert Gazzale, P.E. of the firm of **Fisk Associates, PA**; Middlesex, NJ, Professional Planner John McDonough, P.P., Morris Plains, NJ and Terence Golden, the applicant.

The applicant sought submission waivers from checklist items 11, 14, 17, 29, 32, 33, 35, and 47. The Board professionals recommended submission waivers on items 11, 14, 17, 33, 35, and 47. They deferred to the Board on checklist item 29, concerning the impact of the development on natural features, and checklist item 32, concerning stormwater management.

The applicant's Civil Engineer Robert Gazzale, P.E. testified that no detention or retention facilities could be placed on the lot. He further testified that the proposed application would have no impact on natural features.

The Board had determined that submission waivers could be granted for the checklist items and that the application was declared complete. That did not mean that the Board initially found no impact on natural features or that there was no need for a detention facility. Rather, the Board determined that the applicant could proceed with his application. It was understood that the applicant would be required to provide additional information if required by the Board.

The property was described a vacant parcel with a width of 100 feet and a depth of 155 feet. It was located on an unimproved portion of Metzlar Place, 325 feet from Plainfield Road. Metzlar Place had a 40 foot right of way. The paved width of the road was between 14 feet and 20 feet. The pavement terminated along the frontage of the adjoining parcel to the east, Lot 8.01. The road was not constructed to municipal standards.

Approximately half of the site was constrained with wetlands and wetlands transition areas. The applicant had obtained a Letter of Interpretation (LOI) from the NJDEP delineating the wetlands and wetlands transition areas on the site. The applicant had also received permission to fill in isolated wetlands, to cross a wetlands transition area, and to construct a home on the site.

Although the site was proximate to the Passaic River, it was not within a flood plain.

The site was at an elevation of about 216 at the road, rose to 218-219 where a home was proposed, and reached 220 at the rear of the property. The hundred year flood plain was at an elevation of 214 feet and the Flood Hazard Area Design Flood Elevation was 215.5.

Mr. Gazzale testified that the depth to the ground water on the site was between 1 foot and 15 inches and that the property was underlain with clay. Two (2) soil tests were performed on the site. Based on the tests, that the site had no ability to infiltrate or absorb ground water. Pursuant to NJDEP Best Management Practices, detention or retention facilities must be two (2) feet above the seasonal high ground water. That was not possible to do on the site. He noted that the site drains from the rear (north) to the front (south) to Metzlar Place.

Mr. Golden added that he had purchased the subject property as a vacant lot 27 years ago. He had not seen the property flooded.

Mr. McDonough said that the neighborhood included the three (3) developed lots fronting on the north side of Metzlar Place. They were improved with single family homes, as were the two

(2) lots north on Plainfield Road. South of Metzlar Place was Lot 12, which adjoined the Passaic River, and contained a single family residence. He referred to Metzlar Place as “a nice country lane” and “charming”.

Mr. O’Brien took photographs of the area which showed a wooded neighborhood with older homes.

Mr. McDonough presented **Exhibit A3**. The first page of the exhibit was a colorized Google photograph of the area. The second page showed photographs of homes on Metzlar Place. The homes were small and well kept.

Mr. Golden proposed to construct a three (3) bedroom, two-story, Colonial style home with an attached one-car garage. The home would have a first floor footprint of 864 square feet, along with an attached one-car garage and a mechanical room which would be 11 feet 6 inches wide by 31 feet deep. The second floor would contain 1,063 square feet for total living space in the home of 1,927 square feet. The house would be built without a basement. It would be constructed slab on grade.

The first floor of the home would be at an elevation of 220.5, or 5 feet above the Flood Hazard Area Design Flood Elevation.

There was a sanitary sewer line along Metzlar Place. Because Long Hill Township had a sewer ban the applicant would be required to obtain an exception from the sewer ban. Since there was no public water line on Metzlar Place, the applicant would drill a well to provide water service.

The following required variances were stated:

- The applicant was proposing to construct a single family residence in the B-2 Zone where homes were not a permitted use.
- A lot area variance was required. The subject property contained 15,500 square feet, while the minimum lot size in the B-2 Zone was 20,000 square feet.
- The proposed dwelling would have a 20.7 feet eastern sideyard, while the Zoning Ordinance required a minimum sideyard setback of 30 feet in the B-2 Zone.
- The proposed dwelling would have a rear yard setback of 27.6 feet, while the Zoning Ordinance required a minimum rear yard setback of 30 feet in the B-2 Zone.
- The proposed home would be set back 24.6 feet from a critical area while the Zoning Ordinance requires a setback of 50 feet.

Mr. Sullivan stated that the positive criterion for d-1 use variances was special reasons. Based on the testimony of the applicant’s planner, Mr. McDonough, and board planner, Mr. O’Brien, the Board found that the following purposes of the Municipal Land Use Law under N.J.S.A. 40:55D-2 were promoted by the Golden application:

“a. To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which would promote the public health, safety, morals, and general welfare.” The proposed home and driveway would have a minimal impact on the environmental constraints. The permitted uses would require additional parking and a larger building, which would have a greater impact on the environmental constraints on the lot.

Mr. O’Brien testified that the area was zoned B-2 with the anticipation that the homes in the area would morph into ‘business’ uses. That had not happened and a new home had been built in the area. He further testified that the neighborhood had been designated in the Master Plan as residential, thus placing ‘reality’ over ‘hope’.

“e. To promote the establishment of appropriate population densities and concentrations that would contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment.” The subject property, while undersized, was larger than the other lots on Metzlar Place, except Lot 12, and the two (2) lots north of Metzlar Place on Plainfield Road.

“g. To provide sufficient space in appropriate locations for a variety of ... residential uses ... both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens.” The lots on Metzlar Place, and the two (2) adjoining lots on Plainfield Road, and Lot 12 which was south of Metzlar Place were developed with single-family residences. The permitted non-residential uses with the requisite parking and larger structures would not be appropriate for the environmentally constrained site within a residential neighborhood.

"i. To promote a desirable visual environment through creative development techniques and good civic design and arrangement." The proposed 1,927 square foot colonial style home was compatible with the existing residences in the area. While the residence was small, the architecture was attractive.

"j. To promote the conservation of ... valuable natural resources in the State and to prevent urban sprawl and degradation to the environment through improper use of land." The proposed home had less impact on the environmental constraints than would a conforming use.

Based on the foregoing, the Board found that the subject property was particularly suitable for the construction of a single family residence.

Mr. Sullivan stated that there was an additional rationale for the requested use variance for a single family residence. The Court in *Medici*, supra., 107 N.J. at p. 17, fn9 said that undue hardship was a special reason for the grant of a d variance. The environmentally constrained subject property on minimally improved dead end Metzlar Place was not appropriate for a permitted use in the B-2 Zone, and it was highly unlikely that a conforming use would be located on the lot.

Mr. Sullivan noted that while the subject property was undersized in terms of lot area, it was larger than each of the residential lots in the area except Lot 12. He had sent certified letters to the adjoining property owners on Metzlar Place offering to sell the property. One property owner did not respond and the other property owner did not accept the certified mail letter.

Mr. Sullivan said that the size of the subject property satisfied the positive criteria under N.J.S.A. 40:55D-70c(1)(a) of practical difficulty and undue hardship. In the present case, the subject property would remain "a lot in perpetuity" if the variances were not granted. Without the requested variances, the subject property had no value which constituted a hardship.

Mr. Sullivan added that the environmental constraints on the site dictated the location of the proposed residence. The rear, sideyard, and environmental constraints setback variances were justified under N.J.S.A. 40:55D-70c(1)(b): "by reason of ... physical features uniquely affecting a specific piece of property."

The Board found that the proposed use of the property as a single family residence, the lot area variance, and the setback variances can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Zoning Ordinance of the Township of Long Hill. However, a harder problem was presented with water runoff which was always a concern in Long Hill Township and especially for properties like the subject which were in close proximity to the Passaic River.

The current application was unusual as no detention or retention facilities were proposed. Mr. Gazzale testified that NJDEP Best Management practices precluded a detention and retention facility on the site. He said that the site had no retentive ability for water infiltration at the present time and that the situation would not change with the lot being developed. Mr. Lemanowicz did not contradict this testimony.

The Board found that the requested variances could be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Zoning Ordinance of the Township of Long Hill. According to Mr. Bernstein, without the requested variances, the subject property would be zoned into "inutility" and the applicant could bring litigation against the Board.

Approval for the construction of a building or structure on a lot that fronted on a road that was not improved to municipal standards required a planning variance that the road "... would provide adequate access for firefighting equipment, ambulances, and other emergency vehicles necessary for the protection of health and safety . . ." pursuant to N.J.S.A. 40:55D-36.

The Stirling Fire Department in letters dated July 21st, 2015 and August 17th, 2015 stated that Metzlar Place was currently adequate to support the Fire Department vehicles and that the extension at a width of 15 feet and the ability to support a 40,000 pound fire vehicle would be adequate for firefighting access.

The applicant had agreed to construct a road extension to the requirements of the Residential Site Improvement Standards.

Chairman Behr opened the meeting to the public for comments or questions.

Patricia Hudson, Metzlar Place, was sworn in by Chairman Behr. She asked several questions and expressed concerns about the effect of heaving if the house was built on a slab and also snow removal blocking driveways.

Roseann Hall, 18 Metzlar Place, was sworn in by Chairman Behr and stated that she was very concerned about the water. She discussed the flooding issues that houses on the street experienced.

The board members completed deliberations.

Mr. Gerecht motioned approval of the application. Mr. Pudlak seconded the motion and a **ROLL CALL VOTE** was taken. Those in Favor: Mr. Aroneo, Mr. Gerecht, Mr. Keegan, Mr. Pesce, Mr. O'Mullan, Mr. Pudlak, Chairman Behr. Those Opposed: NONE. The approval was subject to the following conditions:

1. Widen Metzlar Place to 15 feet from the current roadway to the end of the applicant's driveway with ability to support 40,000 pound firefighting vehicles
2. Improve Metzlar Place paving to Residential Site Improvement Standards to Board Engineer approval
3. Site driveway to be paved
4. Submit a lighting plan, subject to Board Planner for review and approval
5. Add two windows to the left elevation for the garage
6. Add one window to the right elevation for the first floor living room
7. Provide copies of DEP permits and documents and associated mapping to Board Engineer
8. Prepare a landscape plan that:
 - a. Added native wet-tolerant trees to the transition area
 - b. Removed dead trees.
 - c. Added wet tolerant trees along the eastern property line for a buffer.
 - d. Trees may or may not appear on Township preferred planting list.
 - e. Landscape plan subject to Board Planner review and approval
 - f. Landscaping to be permanently maintained. Dead, diseased, and missing landscaping to be replaced to the approval of the Board Planner
9. Applicant to make good faith effort to extend the Metzlar Place pavement by an additional 5 feet to accommodate snow removal
10. Applicant to add note to plan pursuant to Board Engineer Report of July 28, 2015, comment 14
11. Plans to be revised to include housekeeping items and Engineer's plan to conform with Architect's plan to the approval of the Board Engineer
12. Approval was subject to the applicant or a successor in interest obtaining a sanitary sewer hookup from the Township of Long Hill.
13. No basement would be installed on a home that was built on the subject property
14. Payment of fees and escrow

Chairman Behr advised Mr. Sullivan that he would receive a draft of the resolution and that the resolution would be memorialized at a subsequent Board of Adjustment meeting.

Mr. Gerecht moved to adjourn. Chairman Behr seconded and the meeting was adjourned at 11:50 PM.

Date: _____

 Cyndi Kiefer
 Planning & Zoning Coordinator